

***United States Court of Appeals
for the Second Circuit***



APPENDIX

PLEASE RETURN TO
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77-1499

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee

-against-

JOSE ANTONIO MANZUETA,
Defendant-Appellant

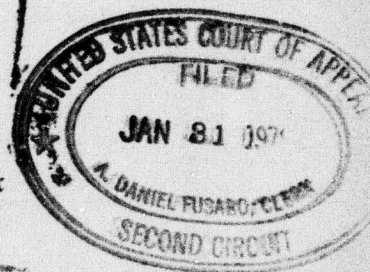
*Appeal from the United States District Court for the Southern
District of New York*

JOINT APPENDIX

WARNER and GILLERS, P.C.
Attorneys for Defendant-Appellant
500 Fifth Avenue
New York, New York 10036
(212) 354-5454

ROBERT FISKE
Attorney for Plaintiff-Appellee
United States Attorney for the
Southern District of New York
Foley Square
1 St. Andrews Plaza
New York, New York 10007
(212) 791-0074

**ORIGINAL
BRIEF
FILED**



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Date	Description	V. EXHIBIT
9-13-77	Filed Govt's requests to charge	
9-13-77	Filed Govt's requested Voir Dire questions of prospective jurors	
9-19-77	Filed deft's proposed examination of prospective jurors	
9-19-77	Filed deft's memorandum of law	
9-20-77	Filed Govt's memorandum in response to deft's motion to suppress evidence	
9-20-77	Suppression hearing held. After oral argument, Motions deniedBRYAN, J.	
9-20-77	Jury trial began before Bryan, J.	
9-21-77	Jury trial continued.....BRYAN, J.	
9-23-77	Trial continued & concluded Jury verdict, deft GUILTY AS charged. Jury polled. Deft motions received. Deft continues on a cash bail of \$1,500 previously posted. Pre-sentence report ordered. Probation notified. Sentence Tuesday November 8, 1977 at 10 AM ...BRYAN, J.	
9-29-77	Filed CJA form #21 copy 5 appointing Gladys Matos as interpreter for deft	
9-29-77	Filed CJA form #21 copy 2 approving payment to Gladys Matos as interpreter for deft dated 9-26-77....BRYAN, J.	
11-9-77	Filed JUDGMENT & COMMITMENT DEFT (US Atty R. Ziegler & defts atty Nicholas Figueroa present) The deft is hereby committed to the custody of the atty General or his authorized representative for imprisonment for a period of THREE & ONE HALF (3 1/2) YEARS pursuant to section 3651 of Title 18, US Code as amended with provision that the deft be confined in a JAIL TYPE Institution for a period of SIX (6) MONTHS as provided in the aforesaid section. It is adjudged that the execution of the remainder of the sentence be suspended & the deft be placed on Probation for a period THREE (3) YEARS, to commence upon expiration of confinement subject to the standing probation order of this Court,BRYAN, J. copies issued	
11-9-77	Filed notice of appeal from the judgment of conviction entered on the 9th day of Nov. 1977 (Mailed notice to Nicholas Figueroa defts atty) (copy to US Atty)	

ASC:ik

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 CRIM. 1045

UNITED STATES OF AMERICA :

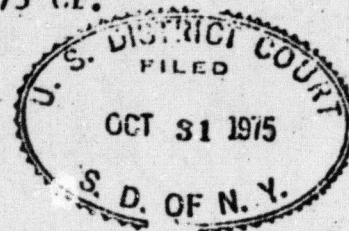
v. :

JOSE ANTONIO MANZUETA, :

Defendant. :

INDICTMENT

75 Cr.



The Grand Jury charges:

On or about the 5th day of July, 1975, in the Southern District of New York, JOSE ANTONIO MANZUETA, the defendant, unlawfully wilfully and knowingly and with intent to defraud had in his possession and attempted to pass, utter and publish a certain falsely made, forged, counterfeited and altered obligation and security of the United States, to wit, a Fifty Dollar Federal Reserve Note, Series 1974, Serial Number 831985756 A, Front Plate Number H3, Federal Reserve Letter B, Quadrant Number H-4, Back Plate Number 18.

(Title 18, United States Code, Section 472.)

[Signature]
FOREMAN

[Signature]
PAUL J. CURRAN
United States Attorney

1 a legal process that is now in your hands, ladies and
2 gentlemen.
3

4 The Government only asks that you play your
5 proper role in that process and that you do your duty
6 to decide this case on the basis of the evidence,
7 overwhelming evidence.

8 Thank you, ladies and gentlemen.

9 THE COURT: Ladies and gentlemen, before I charge
10 you, I think you are entitled to a brief recess which you
11 will have now and then I will charge and submit the case
12 to you.

13 (Jury out.)

14 THE COURT: All right, gentlemen.

15 (Recess taken.)

16 (Jury in box.)

17 THE COURT: Mr. Foreman and ladies and gentlemen:

18 I am about to instruct you as to the law applicable
19 to this case. Under our system of law it's my duty as the
20 Judge presiding at this trial to instruct you as to the
21 law that applies to it and it is your duty as jurors to
22 follow the law as I state it to you.

23 On the other hand it is your exclusive function
24 to determine the facts in the case and to consider the evi-
25 dence for that purpose. Just as you can not encroach on my

1 function, I can not and will not encroach on yours. You
2 are the sole judges of the facts. It is not what counsel
3 on either side has said or what I may say as to what the
4 evidence in this case proves; it is your recollection and
5 your judgment on the evidence that must govern.
6

7 It is for you to determine what the evidence shows,
8 what weight is to be given to various portions of the
9 evidence, what portion of the evidence is to be believed,
10 and what portion is to be disbelieved; what reliance is to
11 be placed on the testimony of the witnesses and what
12 reasonable inferences are to be drawn from the evidence.

13 You will resolve such conflicts as there are in
14 the evidence so as to determine for yourselves where the
15 truth lies.

16 The verdict that you reach must be based solely
17 on the evidence given in this trial and nothing else and
18 in accordance with the instructions I'm now giving you.

19 I should tell you that the fact that the Government
20 is a party here entitles it to no greater consideration than
21 that accorded to any other party in the litigation. By the
22 same token, it's entitled to no less consideration. All
23 parties, the Government and individuals alike, stand equal
24 before this bar of justice.

25 Now, let's turn to the case before us.

1 The indictment in this case contains one count or
2 charge against the defendant, Jose Antonio Manzueta. The
3 indictment charges that on or about July 5, 1975, in the
4 Southern District of New York, which is this District,
5 Manzueta unlawfully, wilfully and knowingly and with
6 intent to defraud, had in his possession and attempted to
7 pass, utter and publish a certain falsely made counterfeited
8 obligation of the United States, to wit, a fifty
9 dollar Federal Reserve note.
10

11 The defendant has pleaded not guilty to that
12 charge.

13 Before I discuss the rules of law applicable to the
14 crime charged in the indictment, I want to talk with you a
15 little bit about the effect that you are to give to the
16 indictment and general rules you are to follow in consider-
17 ing and weighing the evidence.

18 The indictment I have just referred to is nothing
19 but a written accusation. It is only a means of bringing
20 the defendant before the Court, and it is not in itself
21 any evidence whatsoever of guilt.

22 The fact that the defendant is the subject of
23 this indictment and on trial should not be taken against him
24 in any way.

25 The defendant is presumed to be innocent and this

1 presumption has the weight and effect of evidence on his
2 behalf.
3

4 This presumption of innocence continues in the
5 defendant's favor throughout the trial and even during your
6 deliberations in the jury room, and it's overcome only if
7 and when in your minds the guilt of the defendant is estab-
8 lished beyond a reasonable doubt.

9 A defendant does not have to prove himself
10 innocent of the charge against him. The defendant, if he
11 wishes, may rest at the close of the Government's case
12 and is not required to produce any evidence on his own
13 behalf.

14 The burden of proof is on the prosecution to
15 establish the guilt of the defendant beyond a reasonable
16 doubt.

17 This burden on the prosecution applies to each
18 element of the crime charged in the indictment. The burden
19 never shifts to a defendant to prove himself innocent, and
20 the defendant, I repeat, is not required to call any witness
21 or submit any proof of the fact that he's not guilty.

22 The prosecution's burden is not met unless and un-
23 til the proof offered and all the evidence in the case con-
24 vinces you beyond a reasonable doubt that the defendant is
25 guilty.

1 What is a reasonable doubt? The words really
2
3 almost define themselves.

4 A reasonable doubt is a doubt founded on reason
5 arising from the evidence or lack of evidence in the case.
6 Reasonable doubt means a doubt which a reasonable man or
7 a reasonable woman has after carefully weighing all the
8 evidence. It's a doubt that appeals to your reason,
9 your judgment, your common sense and understanding. It
10 does not mean a doubt that is capricious or imaginary
11 or speculative; nor does it mean a doubt borne of
12 a reluctance on the part of a juror to perform an un-
13 pleasant duty, or a doubt arising out of sympathy for a
14 defendant or out of anything other than a candid objective
15 consideration of all the evidence.

16 Nor does proof beyond a reasonable doubt mean
17 proof to a positive certainty or proof beyond all
18 possible doubt.

19 You should carefully review, weigh, analyze, and
20 discuss all of the evidence in the case. If
21 the fair and impartial consideration of all the evidence
22 produces a settled and a firm belief in your mind of the
23 defendant's guilt, such as would induce a prudent person
24 to act without hesitation in weighty and important matters
25 concerning his or her own affairs, then you may say you have

no reasonable doubt and you may find the defendant guilty.

In other words, proof beyond a reasonable doubt must be proof of such convincing character that a prudent person would not hesitate to rely upon it in acting on important affairs of his or her own.

On the other hand, if after a fair and impartial consideration of all the evidence you find that you have a doubt, such as would cause a prudent person to hesitate before acting in matters of importance to himself or herself, then you have a reasonable doubt and you must return a verdict of not guilty.

With these principles in mind, let's turn to the law applicable to the charge in the indictment here.

The defendant is charged with violating a section of the United States Code. That statute is reasonably clear and I will read it to you insofar as it's applicable.

It reads this way: Whoever with intent to defraud, pass, utters, publishes, sells or attempts to pass, utter, publish or sell or with like intent keeps in possession any falsely made forged or counterfeited obligation or security of the United States is guilty of a crime.

Now specifically the Government contends that the evidence here establishes that on July 5, 1975 the defendant, Jose Manzueta, walked into Smalls' Liquor Store at 8th Avenue

1 and 154 Street in Manhattan. He talked to the clerk in the
2 store, Angelo Mimms, and asked to buy some liquor. The
3 defendant handed Mimms what looked like a \$50 bill;
4 that is to say, a fifty dollar Federal Reserve note. This
5 was in payment for the liquor he was purchasing.
6

7 On examining the fifty dollar note, the clerk
8 Mimms thought it was a counterfeit and therefore refused
9 to complete the purchase, telling the defendant he thought
10 the note was counterfeit.

11 The defendant then tried to leave the store
12 but the clerk refused to let him leave, called the police,
13 and detained Manzueta until the police came.

14 The clerk told the officers what had happened,
15 and gave them the fifty dollar bill. The police then arrested
16 Manzueta and took him to the police station.

17 The bill was later examined by the Secret Service
18 agent who testified that in his opinion it was counterfeit.

19 You heard extensive testimony as to what happened
20 after that, including the statements to the police and the
21 Secret Service agent and the finding of two similar
22 fifty dollar bills in back of the car on the block opposite
23 the liquor store.

24 The defendant denies that he violated the law
25 and particularly denies that he knew that the bill, the fifty

dollar bill, which is Exhibit 1, was counterfeit.

In order to find the defendant guilty on the charge against him, you must find, after consideration of all the evidence, that the Government has proved each of the elements of the crime charged beyond a reasonable doubt.

I will go into these elements and explain them to you.

A couple of preliminary matters: first, I charge you that a valid fifty dollar bill, or a fifty dollar Federal Reserve note, or a bill of any other denomination or note of any other denomination is "an obligation or security of the United States" if it's valid.

The next thing you must find that the acts charged took place within the Southern District of New York where this Court sits. I charge you that 154 Street and 8th Avenue in Manhattan where Smalls' Liquor Store is located is within the Southern District of New York. There is no question about that.

Now, as to the elements of the offense itself.

First, you must find beyond a reasonable doubt in order to find the defendant guilty, that Exhibit 1, which appeared to be a fifty dollar Federal Reserve note, was not a genuine note issued by the Government, but it was in fact counterfeit. Counterfeit means that the note was

1 not genuine but was a fake, an imitation of a genuine fifty
2 dollar Federal Reserve note. You heard the testimony
3 of the Secret Service Agent Horton with respect to that note
4 and his testimony that in his opinion it was a counterfeit.
5

6 Second, you must find beyond a reasonable doubt
7 that the defendant attempted to pass, utter or publish
8 the fifty dollar note -- that's legal language -- which
9 was counterfeit in Smalls' Liquor Store on July 5, 1975; to
10 pass a counterfeit bill is to give it in payment or ex-
11 change for something of value such as goods, clothing,
12 liquor, money or anything you are buying. To utter or
13 publish a counterfeit bill is to pass it with a declara-
14 tion that it is good and valid currency and not counterfeit.

15 The defendant need not have actually stated
16 that the bill was genuine. If he offered it in payment
17 for a purchase then you may find he was representing by
18 his condition that it was a valid bill. Nor is it necessary
19 that the liquor store actually accept the bill as genuine
20 and thereby suffer some loss. It is sufficient if the
21 defendant offered the bill in payment with the representa-
22 tion, express or implied, that it was valid.

23 The next element of the offense which the Govern-
24 ment must establish beyond a reasonable doubt is that the
25 defendant knowingly attempted to pass the counterfeit note.

1 PGjc
2 That is to say that the defendant must have known that the
3 fifty dollar bill was counterfeit when he attempted to pass
4 it in the liquor store.

5 One acts knowingly if he acts voluntarily and
6 purposefully and not because of mistake or action or mere
7 negligence or other innocent reason. It's not enough that
8 the defendant possess the fifty dollar bill to establish
9 that he had knowledge it was counterfeit. You must find
10 beyond a reasonable doubt that the defendant was aware
11 that the bill that he tried to pass in the liquor store
12 was not a valid one, was counterfeit.

13 In order to find the defendant guilty, you
14 must find beyond a reasonable doubt that the defendant,
15 in attempting to pass the counterfeit bill, acted with an
16 intent to defraud. You must find that the defendant acted
17 with a specific unlawful intent, namely that the fifty
18 dollar bill, Exhibit 1, be accepted by the clerk in the store
19 as genuine.

20 Finally, you must also find beyond a reasonable
21 doubt that the defendant acted wilfully and unlawfully.

22 Unlawful means to do an act contrary to law.
23 An act is wilful if it's done knowingly and deliberately,
24 purposefully and with a specific intent to do it. It's not
25 necessary in order that this element be satisfied that the

1 defendant knew he was breaking any particular
2 law but it is necessary that he acted with the specific
3 intent to do the unlawful thing which he's accused of doing.

4 I'll say to you this: that the defendant's know-
5 ledge of whether the bill was counterfeit and whether or
6 not he had the intent to defraud are major issues here.
7 Manzueta takes the position that if the note was counter-
8 feit he was wholly unaware of that fact and that he gave
9 Minns the note in the belief that it was a genuine bill.
10 Thus, you can not convict the defendant on the charge here
11 unless you find beyond a reasonable doubt that he knew that
12 the note was counterfeit when he gave it to the clerk in
13 the liquor store in payment for the liquor he was purchas-
14 ing.
15

16 The question of the defendant's knowledge that the
17 bill was counterfeit and his wilful intent to pass the bill
18 as genuine are questions of fact for you to determine,
19 like any other questions of fact that are before you. But
20 unlike most other questions of fact these questions involve
21 what goes on in a person's mind or the purpose that motivates
22 him in a given course of conduct.

23 We have not yet devised any instrument or
24 device to record what goes on in a person's mind. Frankly,
25 I rather hope we never shall. But in any event, rarely is

1 PGjc
2 direct proof available that a person has knowledge of a
3 particular act or has a particular purpose of intent in mind
4 when he does that.

5 On occasions, sometimes very rarely, he may
6 write a letter or make a statement showing he has a
7 particular purpose or particular knowledge, but this is
8 rare and obviously the exception that proves the rule.

9 Thus direct proof of knowledge or of wilful
10 or wrongful intent is not necessary. Usually such
11 knowledge or purpose is established by circumstantial
12 evidence, that is, from a consideration of acts, con-
13 duct, and all the surrounding circumstances and the
14 natural inferences to be drawn. This is true with
15 respect to an intent to pass counterfeit bills as genuine,
16 which really means to act knowingly and with the specific
17 purpose of bringing about some unlawful financial gain to
18 the actor, the passer. That's to be established by circum-
19 stantial acts and conduct and the inference to be drawn there-
20 from.

21 Remember, however, as to each of the elements
22 of the offense I described to you, you must be satisfied
23 beyond a reasonable doubt before you find the defendant
24 guilty.

25 This has been a short case, ladies and gentlemen.

I'm sure the evidence is fresh in your minds. Counsel for both sides have discussed the evidence at considerable length. I don't think it's necessary to discuss the details of the evidence any further with you here.

There are, however, several other subjects that I want to talk on briefly that may aid you in your deliberations.

First, I want to talk to you about the credibility of witnesses, always a question of importance in a case. Questions of a witness' credibility are exclusively for you to pass upon. It's up to you, the jury, to determine what parts of the evidence you believe and what parts you disbelieve and reject.

Credibility is just another word for believability. The appraisal of the credibility to be given to the testimony of a witness is very much governed by your plain, everyday common sense. That's really why we have juries, because we know they have plain, everyday common sense.

People in your daily lives may tell you things which may or may not influence important decisions you make. You consider whether these people have the capacity and the opportunity to observe or be familiar with and to remember and accurately report the things that they tell you. You consider any possible interest they may have and the results

1 to be obtained, any bias or prejudice, any motive they may
2 have to testify falsely. You consider a person's character,
3 whether he or she is believable or not. You consider his or
4 her demeanor, and you decide whether he or she strikes you
5 as fair or candid, and then you consider the inherent
6 believability of what is said and whether it accords with
7 your own knowledge and experience.
8

9 It's the same thing with witnesses. You watch them
10 on the stand as they testify. You ask yourselves whether
11 they know what they are talking about and are fairly report-
12 ing it. You evaluate their truthfulness. You take into
13 account the extent to which they may have been impeached
14 as witnesses either generally or specifically, and whether
15 they have made any statements inconsistent with or contra-
16 dictory to the testimony they gave on the stand. You take
17 into account their motive, if they have any, to testify
18 falsely.

19 In other words, what you do is to size a person
20 up and determine whether he's truthful, candid, and straight-
21 forward and whether you think you should believe his testi-
22 mony.

23 You may disregard all the testimony of a witness if
24 you do not believe it, or you may accept such part of it as
25 you believe and find reliable and disregard the rest.

1 You heard testimony here from various Secret
2 Service agents and police officers. The mere fact that
3 these witnesses are policemen or agents does not entitle
4 their testimony to any greater credence than that of any
5 other witness who has appeared before you, nor does it
6 entitle their testimony to any less credence.
7

8 As Government agents or employees such witnesses
9 may be found to have a natural interest in the outcome of
10 a case with which they are concerned. Such interest,
11 as I have said, is just one of the facts that you can take
12 into account in determining their credibility.

13 Now the Government suggests that after he was
14 detained, arrested, Manzueta attempted to exculpate him-
15 self by making certain statements which the Government
16 claims were false and which he knew to be false. If
17 you find that the defendant knowingly and deliberately made
18 false exculpatory statements, then you may consider this as
19 circumstantial evidence from which consciousness of guilt
20 may be inferred. Whether or not the evidence as to the
21 defendant's explanation and statements were in fact false
22 and whether they may be considered as pointing to a con-
23 sciousness of guilt are matters exclusively for you, the jury,
24 to determine in the light of all the facts and circumstances
25 including the circumstances under which such explanations

and statements were made and possible language difficulties.

Also I want to refer briefly to the subject of circumstantial and direct evidence. There are two classes of evidence recognized and admitted in the courts. One is direct and the other is circumstantial. You may of course consider both kinds in determining guilt or innocence.

Direct evidence is where a witness testifies to facts of his own knowledge or things that he saw, that he was present at, things that he watched, anything that a witness testifies which comes to him by virtue of his own senses, his own observations; that's direct evidence.

Circumstantial evidence is where proof is given of facts and circumstances from which one may infer other connected facts which reasonably follow in the common experience of mankind.

Let me give you a very simple example: suppose you were in a house. The shades are pulled down. A man comes in wearing a wet raincoat and rubbers and his hat is wet and he has a dripping umbrella in his hand. Since the shades are pulled down and you have not looked out, you have not seen, of your knowledge, and you do not know whether it's raining outside. But even if you have not seen whether or not it is raining, because the man came in with a dripping umbrella and a wet raincoat and so forth,

1 obviously you are entitled to conclude it was raining out-
2 side.
3

4 This, of course, is an oversimplification. But
5 that's what I'm talking about. It's an illustration, however,
6 of what we mean by circumstantial evidence. Circumstantial
7 evidence, if it's believed, is of no less value than direct
8 evidence. In either case, no matter what type of evidence
9 you are considering you must be convinced in the last
10 analysis beyond a reasonable doubt of the defendant's guilt
11 before you can convict him of the charge.

12 I think all of you must remember no conviction
13 can be based on suspicion or conjecture or speculation
14 no matter how strong. Conviction can only be based on
15 actual proof of guilt beyond a reasonable doubt and if the
16 proof doesn't meet that standard, in your view you must
17 acquit.

18 The defendant, Jose Manzueta, did not take the
19 stand in this case. The Constitution and laws of the United
20 States provide that in any trial of a criminal charge the
21 defendant is under no obligation to testify or indeed to
22 come forward with any evidence, because the burden of
23 proving a violation of law is solely and exclusively on
24 the prosecution. I therefore charge you that you may not
25 consider in any way the fact that the defendant has chosen

1 not to testify in this case. That's his right under the
2 law and the Constitution, and you are not permitted to
3 speculate upon the reasons why he didn't testify, nor
4 may you draw any inferences of any kind from his determina-
5 tion or decision not to take the stand. The right to that
6 decision is a choice shared by every defendant in a criminal
7 trial in this country. It may in no way be used against the
8 defendant as a substitute for or a supplement to the
9 evidence against him.
10

11 With these general principles in mind, you will
12 be glad to hear I'm almost finished.

13 You will consider all the evidence and approach
14 the important question of whether or not the prosecution
15 has proved beyond a reasonable doubt that the defendant is
16 guilty of the charge against him.

17 You must remember it is not a question of the
18 number of witnesses or quantity of proof which determines
19 the issue for or against the defendant; it is the quality
20 of the evidence in terms of its believability and truthful-
21 ness under the standards I have given you which should
22 be controlling in your minds.

23 Let me remind you again that the prosecution has
24 the burden of proving each element of the crime charged
25 beyond a reasonable doubt, as I have explained it to you.

1
2 If you find the evidence fails to establish the
3 crime charged or any element of the crime charged, beyond
4 a reasonable doubt, you must find the defendant not guilty;
5 but if you find beyond a reasonable doubt that the defendant
6 has violated the law as charged, you should not be reluc-
7 tant because of sympathy or for any other reason to bring in
8 a verdict of guilty.

9 The actions of the Court during the trial in ruling
10 on motions or objections are not to be taken by you as any
11 indication of the guilt or innocence of the defendant.
12 These are matters of procedure in law which are my concern
13 and not yours. The arguments of counsel addressed to the
14 Court on questions of law or on applications during the
15 course of the trial as well as conferences that may have
16 taken place up here at the side bar are also to be disre-
17 garded.

18 Counsel's statements and arguments on summation
19 are not evidence nor are the questions they asked evidence.
20 The only evidence is that given on the witness stand as you
21 recollect it, exhibits in evidence, and the stipulations
22 of fact entered into between opposing counsel.

23 Where answers of the witness have been excluded
24 or stricken from the record, you must disregard both the
25 question and the answer; only matters which the Court has

1
2 admitted in evidence and remain part of the record are to
3 be considered by you in reaching your verdict.

4 I talked about inferences a number of times here.
5 What I mean by an inference, ladies and gentlemen, is
6 simply this: a deduction or conclusion which reason and
7 common sense leads the jury to draw from facts which have
8 been proved.

9 The question of possible punishment of the
10 defendant, should he be convicted, is of no concern to you.
11 It should not enter in any sense into your deliberations
12 in any way. If there should be a finding of guilt as to
13 the defendant, the duty of imposing sentence rests exclusive-
14 ly with the Court, with me. It's of no concern to you.

15 I'm not going to say as much about your delibera-
16 tions. I think all of you understand that the object of
17 jury deliberations is to exchange views with your fellow
18 jurors, to discuss and consider the evidence, to listen
19 to everybody's arguments, and to reach an agreement based
20 solely on the evidence. Each juror must decide the case
21 for himself or herself, but you should do so only after
22 consideration with your fellow jurors of the evidence, all
23 of the evidence, in the case. And you should not hesitate
24 to change an opinion when you are convinced it's erroneous.

25 However, if after carefully following all the

1 evidence and the arguments of your fellow jurors you enter-
2 tain a conscientious view that differs from the others, you
3 are not to yield your conviction simply because you are out-
4 numbered or outweighed or in the minority. You are composed
5 of twelve jurors. You must consider the crime charged
6 in the indictment and must all agree on a verdict of guilty
7 or not guilty; that is to say, your verdict must be unani-
8 mous.
9

10 If in the course of your deliberations you want any
11 of the exhibits or want any excerpts of the testimony read,
12 your foreman may send me a note to that effect and I will
13 of course be available to you throughout your deliberations.

14 I think that's about all, ladies and gentlemen.

15 Your oath that you took here as jurors sums up
16 your duty; that is, without fear or favor to any man you
17 will well and truly try the issues between the defendant
18 and the Government according to the evidence given you in
19 this courtroom and the laws of the United States as I have
20 charged them to you.

21 Do counsel wish to be heard?

22 (At the side bar.)

23 MR FIGUEROA: I don't recall hearing your mention-
24 ing the fact that there was a language problem.

25 THE COURT: I did.

to an inventory search by the Secret Service.

Such a search would plainly have been legal under the recent Supreme Court decision of South Dakota vs. Opperman. Since it would in any case have yielded the bills, the bills are admissible under the Falley case.

The motion is clearly without merit for these reasons.

THE COURT: I have been reading a lot of these cases both before and after this morning's session and the following things are quite clear to me. I will not spell them out in any detail.

As I see it there are four various items to which the defendant's motion is directed. One of them, mentioned first by the defendant, is the material, the answers given by the defendant to inquiries by Agent Simon after Agent Simon had given the defendant the Miranda warnings. I deny that motion to suppress.

Then there is the second, the examination by Police Officer Mercado in the Precinct in the Bronx. That also I deny. I deny that motion to suppress.

Thirdly, there is the biographical material or pedigree material that was adduced by the U.S. Attorney, Mr. Costello, I believe, at the interrogation in the U.S. Attorney's office. I do not believe that that biographical

1 material falls within the Miranda rule. It does not seem
2 to me that there was any basic violation of Miranda and the
3 cases supporting it in this particular case. Indeed, there
4 is an opinion by Judge Mansfield in Hines vs. Lavallee--
5 that was Judge Mansfield's opinion, I think -- which is close
6 enough to this situation to govern it. I deny that motion
7 for suppression of the additional pedigree material which
8 was evoked after the U.S. Attorney Costello's questioning
9 of the defendant, advising the defendant of his rights and
10 the defendant saying yes, I would like a lawyer, and then
11 going on with the additional questions which were properly
12 qualified and applied details that had nothing to do with the
13 crime and did not constitute any investigatory practise
14 in violation of the Miranda rule.
15

16 Finally we come to the question of the two
17 additional \$50 counterfeit notes that were found under the
18 back seat of the defendant's car. I have followed the
19 evidence in great detail with respect to that. It seems
20 to me that under all the circumstances a warrant was not
21 necessary for the search; that there was plainly probable
22 cause for the search to be conducted and indeed if we take
23 Judge Friendly's opinion in 367 Fed. 2nd 1013, Francilino,
24 for example, you have really two grounds on which that motion
25 to suppress can be denied, the first of which is under the

1 circumstances here there was plainly probable cause to
2 search the vehicle and the search was not improper in any
3 way, particularly in view of all of the circumstances which
4 I will not outline in detail here, including the defendant's
5 own statement that the car was not available and was in a
6 garage and could not be found and the fact that he had been
7 talking in terms of a third person in the car of some kind
8 or another, either as the driver or the passenger, whatever
9 that may be. Then of course this additional ground which
10 Judge Friendly discusses in *Franklino*, which is the
11 ground for the car yielding contraband and the conditions that
12 flow, what I would call the contraband theory of the seizure
13 of the car, and the contraband theory: The theory of the right
14 of the Government to look for contraband where there is
15 reasonable cause to believe that contraband may be found.
16

17 On all those grounds I deny that motion to suppress
18 so that all motions to suppress are denied.

19 We will now get the panel up here and proceed
20 with the selection of the jury.

21 I think we'll take one or maybe two alternates. We
22 might as well particularly if we have a Jewish holiday in
23 between which may interrupt the proceedings.

24 We will proceed on that basis and the Clerk will
25 advise you when the panel is here.

COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- against -

JOSE ANTONIO MANZUETZ,

Defendant-Appellant,

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, James A. Steele being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 112 West 136th Street; New York, New York

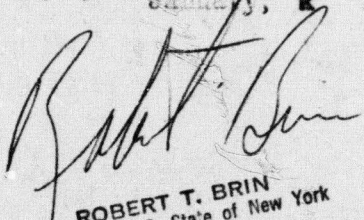
That on the 31st day of January 19 78 at 1 St Andrews Plaza New York, N.Y. upon deponent served the annexed

Joint Appendix

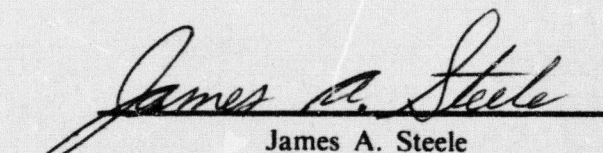
Robert Fiske

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 31st day of January, 19 78



ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979



James A. Steele